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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2006

No. 4327—li/1(BH)-108/1993-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th March 2006 in Industrial Dispute Case No. 198 of 1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Subdivisional Manager, O.F.D.C. Limited, At/P.O. Dukura, Dist. Mayurbhanj and its workman Shri Udaya Madhei, S/o Aparti Madhei, At Balabhadrapur, P.O. Kundabai, Dist. Mayurbhanj was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 198 OF 1994

Dated the 4th March 2006

Present :

Shri P. K. Sahoo, o.s.J.s. (Jr. Branch)
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Subdivisional Manager .. First Party—Management
O. F. D. C. Limited
At/P.O. Dukura, Dist. Mayurbhanj.

And

Shri Udaya Madhei .. Second Party—Workman
S/o Shri Aparti Madhei
At Balabhadrapur, P.O. Kundabai,
Dist. Mayurbhanja.

Appearances :

For the First Party–Management . . . None

For the Second Party–Workman himself . . . Shri U. Madhei

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 15521(5)-L.E., dated the 25th November 1994 for adjudication of the dispute and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the action of the management of Orissa Forest Development Corporation Limited, Dukura in terminating the services of Shri Udaya Madhei with effect from the 1st April 1991 is legal and/or justified ? If not, what relief he is entitled to ?”

3. By way of this reference workman Shri Udaya Madhei has challenged the legality and justifiability of the action of the management of Orissa Forest Development Corporation Limited, Dukura (in short the management) in terminating his services with effect from the 1st April 1991.

The brief facts giving rise to the present reference are that the workman was engaged as N.M.R., Watcher under the management with effect from the 1st September 1982. He continued to work as such till the date of his termination on the 1st April 1991. According to the workman he had rendered continuous uninterrupted service for the above period with much sincerity, devotion and to the utmost satisfaction of the authorities but the management without any rhyme or reason had terminated his services with effect from the 1st April 1991 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). While seeking industrial adjudication the workman has prayed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. Subsequently the management remained absent and was set *ex parte*. The *ex parte* hearing commenced on the 8th February 2006.

5. During *ex-parte* hearing the workman has clearly supported and corroborated the facts averred in the statement of claim. In his evidence he has further stated that he was working as Watcher in the establishment of the management in the year 1982 at Dukura Range and continued to work as such till he was terminated from service with effect from the 1st April 1991. The management while terminating his services had not given any notice or notice pay and retrenchment compensation. He has now prayed for his reinstatement in service with back wages. The evidence of the workman has not been challenged by the management during evidence in any manner. No rebuttal evidence is also adduced by the management in support of its case to establish that the workman was not working during the above said period under the management and that he is not entitled to get any relief as prayed for. Rather despite opportunities, the management remained absent and did not prefer to examine any witness

in support of its case. Therefore, in absence of any rebuttal evidence to that effect, the oral evidence given by the workman appears to be trust worthy and credible. After going through the evidence of the workman, I also find no reason to disbelieve his evidence on the above context. Rather it has been well established that the workman had rendered continuous uninterrupted service since 1982 till the date of his termination on the 1st April 1991 and the management while terminating his services had not given any notice pay and retrenchment compensation which, in my view are in complete violation of the mandatory provisions of Section 25-F of the Act. It has been decided in catena of decisions that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In the instant case the workman has successfully proved the case with regard to his continuous service under the Management and illegal termination with effect from the 1st April 1991. In view of the evidence given by the workman and keeping an eye to the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 1st April 1991 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

6. Hence it is ordered.

ORDER

That the action of the management of Orissa Forest Development Corporation Limited, Dukura in terminating the services of Shri Udaya Madhei with effect from the 1st April 1991 is neither legal nor justified. Admittedly the management has not availed the services of the workman with effect from the date of termination, in such premises, the workman is entitled for reinstatement in service, but on the facts and circumstances of the case as the workman had not worked with effect from the date of his termination, he is not entitled to any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
4-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
4-3-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government